

Union Calendar No. 905

84TH CONGRESS  
2D SESSION

**S. 1644**

[Report No. 2362]

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1955

Referred to the Committee on the Judiciary

JUNE 15, 1956

Reported with amendments, committed to the Committee of the Whole House  
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

**AN ACT**

To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Federal Construction  
4 Contract Act of ~~1955~~ 1956".

5 SEC. 2. (a) Each executive agency shall list in the bid-  
6 ding or contract documents relating to each lump-sum con-  
7 struction contract before accepting bids or proposals with  
8 respect thereto, each major category of mechanical specialty  
9 work involved in the performance thereof.

10 (b) No executive agency shall award to, or enter into

1 a lump-sum construction contract with, any prime contractor  
2 unless the name of the contractor with whom the prime  
3 contractor will contract for the performance of each major  
4 category of mechanical specialty work involved which may  
5 have been listed by the contracting executive agency in the  
6 bidding or contract documents, has been specified by the  
7 prime contractor in the bid or proposal upon which the  
8 contract is awarded or made.

9 (c) This section shall not prevent any prime contractor  
10 from himself performing any major category of mechanical  
11 specialty work under a lump-sum construction contract  
12 awarded to or undertaken by him if the bid or proposal  
13 referred to in subsection (b) of this section specifies that  
14 the prime contractor will himself perform such category of  
15 the mechanical specialty work.

16 (d) This section shall not be construed to forbid or  
17 prevent any executive agency from awarding separate or  
18 several prime or direct lump-sum construction contracts for  
19 any one construction project.

20 (e) No prime contractor under a lump-sum construction  
21 contract shall have any major category of mechanical spe-  
22 cialty work involved in the performance of such construction  
23 contract as listed by the contracting executive agency in the  
24 bidding or contract documents, performed by any person  
25 other than the person named for the performance of such

1 work in accordance with subsection (b) or (c) of this  
2 section, except in accordance with the provisions of subsec-  
3 tion (f) or (g) of this section.

4 (f) If a contractor named by the prime contractor  
5 under a lump-sum construction contract in accordance with  
6 subsection (b) of this section shall fail or refuse to perform  
7 or complete the work to be performed by him in accordance  
8 with the terms of his subbid or subcontract therefor, the  
9 prime contractor may engage a substitute or different con-  
10 tractor to perform such work: *Provided*, That he first  
11 submits in writing to the contracting executive agency the  
12 name of the substitute contractor.

13 (g) If, for any reason as determined necessary by the  
14 respective contracting agencies and not specified in subsec-  
15 tion (f), a prime contractor under a lump-sum construction  
16 contract prefers to have any major category of mechanical  
17 specialty work on the project covered by such construction  
18 contract as to which he has named a contractor under sub-  
19 section (b) hereof performed by a contractor other than the  
20 one named in accordance with said subsection (b), the prime  
21 contractor may engage such substitute contractor if (1) the  
22 prime contractor submits to the contracting executive agency  
23 in writing, the name of the substitute contractor and such  
24 information as the contracting executive agency may request  
25 as to any change in cost to the prime contractor involved

1 in the proposed change in contractors; (2) *the total con-*  
2 *tract price is adjusted by the net difference in cost in the*  
3 *event such substitution results in a lower cost to the prime*  
4 *contractor than that specified for such work in the construc-*  
5 *tion contract; and ~~(2)~~ (3) the use of such substitute con-*  
6 *tractor is permitted in writing by the contracting executive*  
7 *agency.*

8 (h) This Act shall not apply to the following con-  
9 struction contracts:

10 (1) Contracts to be performed outside the continental  
11 limits of the United States, which limits shall be deemed to  
12 include Alaska.

13 (2) Contracts in which the aggregate bid or proposal  
14 accepted by the contracting executive agency does not  
15 exceed \$100,000.

16 (3) Any contract with specific reference to which the  
17 head of the contracting executive agency determines that the  
18 procedure prescribed herein would result in undue delay and  
19 that the public exigency will not admit of such delay.

20 SEC. 3. For the purposes of this Act--

21 (1) The term "executive agency" means any executive  
22 department or independent establishment in the executive  
23 branch of the Government, including any wholly owned  
24 Government corporation.

25 (2) The term "construction contract" means any con-

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1 tract entered into by any executive agency for the erection,  
2 repair, moving, remodeling, modification, or alteration of any  
3 building or structure upon real estate intended for shelter or  
4 comfort, or for production, processing, or travel, including  
5 without being limited to, buildings, bridges, tunnels and high-  
6 ways, but not including aqueducts, reservoirs, dams, irriga-  
7 tion and regional water supply projects, flood control  
8 projects, water power development projects, jetties and  
9 breakwaters or the buildings or structures incident to or  
10 included in the contract for such excluded projects.

11 (3) The term "mechanical specialty work" in connec-  
12 tion with a construction contract means all plumbing, heat-  
13 ing, piping, air conditioning, refrigerating, ventilating, and  
14 electrical work, including but not being limited to the fur-  
15 nishing and installation of sewer, drainage and water supply  
16 piping and plumbing, heating, piping, air conditioning, re-  
17 frigerating, ventilating and electrical materials, equipment  
18 and fixtures.

19 (4) The term "prime contractor" means a person hav-  
20 ing a direct contractual relationship with an executive  
21 agency for the performance of a construction contract.

22 (5) The term "person" means an individual, corpora-  
23 tion, partnership, association, or other organized group of  
24 persons. All references to contractor or prime contractor  
25 shall include individuals, corporations, partnerships, associa-

1 tions, or other organized groups of persons who are con-  
2 tractors or prime contractors.

3 (6) The terms "lump-sum contract" and "lump-sum  
4 construction contract" mean a construction contract, whether  
5 awarded after bid or negotiated, under which the price is  
6 fixed or to be fixed by any method other than the cost-plus-  
7 a-fixed-fee method.

8 SEC. 4. (a) Neither this Act nor compliance with  
9 the provisions thereof shall be construed to create any privity  
10 of contract between the United States Government, or any  
11 agency thereof, and any contractor, contracting with the  
12 prime contractor under any construction contract, or give  
13 any such contractor any cause of action against the United  
14 States or any agency thereof arising out of the failure of any  
15 person to comply with the provisions of this Act.

16 (b) *Nothing contained in this Act shall be construed to*  
17 *limit or diminish any rights or remedies which the United*  
18 *States or any agency thereof may have against the prime*  
19 *contractor arising out of the construction contract, or to*  
20 *relieve the prime contractor of any responsibility for per-*  
21 *formance of the construction contract because of any action*  
22 *taken by the United States or any agency thereof to approve*  
23 *or accept a contractor named by the prime contractor or*  
24 *to permit, approve, or deny the substitution of a contractor*

1 *named by the prime contractor under any provisions of*  
2 *this Act.*

3     ~~(b)~~ (c) Nothing in this Act contained shall be con-  
4 strued to prevent any executive agency from requiring, in  
5 its discretion, approval or acceptance by it of contractors  
6 engaged or to be engaged by any prime contractor on a  
7 construction contract or from making any other requirements  
8 it deems advisable in its discretion with respect to contractors  
9 engaged or to be engaged by prime contractors on any con-  
10 struction contract or from requiring any information it deems  
11 advisable in its discretion as to the cost of performance of  
12 any construction contract.

Passed the Senate July 27, 1955.

Attest:

FELTON M. JOHNSTON,

*Secretary.*

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